

REMARKS

Favorable reconsideration and allowance of this application are requested.

1. Discussion of Amendments

By way of the amendment instructions above, the Abstract has been revised so as to be within the required 150 word limit.

Several of the pending claims have also been revised so as to address the formality issues raised in the Official Action. In this regard, the embedded preferred range of claim 4 has been deleted and now appears as new dependent claim 16. as to claim 8, "1,4-butene diol" has been changed to "1,4-butane diol". The definition of claim 9 has been changed so as to recite "A block copolyetherester elastomer according to claim 7, wherein the polyester blocks comprise butylene terephthalate." As to claim 14, the non-statutory "use" definition has been recast as an elastic fiber or film per se.

Therefore, following entry of this amendment, claims 1-16 will remain pending herein for which favorable action on the merits is solicited.

2. Response to 35 USC §§101 and 112 Rejections

The amendments to claim 14 noted above are believed to render moot the rejections advanced under 35 USC §§101 and 112. Withdrawal of the same is solicited.

3. Response to 35 USC §§102 and 103 Rejections

Claims 1-5 attracted a rejection under 35 USC §§102 (b) or 103(a) as allegedly being anticipated by or obvious over Bonte et al (USP 6,380,290). Claims 6-13 attracted a rejection under 35 USC §103(a) as allegedly obvious over Bonte et al. Finally, claims 14-15 attracted a rejection under 35 USC §103(a) as allegedly obvious over Bonte et al in view of Tieke (USP 5,122,303). As will become evident from the

following discussion, all claims pending herein are patentably distinguishable over such publications.

The Examiner states that the onus is on the applicant to establish that the polyols disclosed in Bronte, namely PL 380, PL580 and PL 720, do not have an unsaturation content of polyol within the range claimed in the present invention (i.e. less than 35 meq per kg poly(alkylene oxide) polyol). To this end, there is attached hereto a Statutory Declaration of Pieter Gijsman, a co-inventor in Bronte et al, which states that the unsaturation content of the polyols of PL 380, PL580 and PL 720 were in the range of 36 to 50 meq per kg poly(alkylene oxide) polyol). The Statutory Declaration also confirms that comparative example 1 is representative of PL 380, as disclosed in Bronte et al.

Accordingly, applicants submit that Bronte et al does not anticipate the subject matter of claims 1-5.

Pending claim 1 differs from Bronte et al in that Bronte does not at least disclose that the unsaturation content of the polyols is less than 35 meq per kg poly(alkylene oxide) polyol). The advantage of this technical features is disclosed on page 4, line 31 to page 5, line 1, which states:

“The advantage of the use of a PO-EO polyol with a lower unsaturation content is that the process becomes less critical with regard to the preparation of copolyether ester copolymers and that copolyether ester copolymers can be made with an even higher content of PO-EO polyol and or with PO-EO polyols with a higher molecular weight while still retaining copolyether ester copolymers with as good or even better mechanical properties, in particular higher elongation, and with better MVTR values.”

The technical effect of this feature is further highlighted in Tables 5 and 6 (page 25) of the specification. Comparative examples 1 and 2 contain polyol with an unsaturation content of 36 and 57 meq per kg poly(alkylene oxide) polyol) respectively. Compositions within the scope of the present invention exhibit superior mechanical and/or moisture vapor transmission rate properties.

None of the applied publications of record, alone or in combination, teach of the advantageous effects of reducing the unsaturation content of the polyol. Accordingly, applicants submit that claim 1 and its dependent claims are non-obvious over Bronte et al either alone or with Tieke.

The effect of adding the reduced unsaturation content of the polyol is most pronounced in copolyetherester compositions with a weight ratio of poly(alkylene oxide) polyol to aromatic dicarboxylic acid or the ester forming derivative thereof of between 50/50 and 90/10 (i.e. weight ratio of soft block content to hard block content). Only PL 380 (equivalent to comparative example 1) in Bronte et al falls within this range (see paragraph 8 of the attached Statutory Declaration). As highlighted in Table 2 and discussed on page 21, lines 1 to 13, compositions with high soft block content, outside the scope of the present invention, are prone to phase separation from the hard block component.

None of the applied publications of record, alone or in combination, towards a composition comprising the combination of features (a) to (f), which result in copolyether ester copolymers good mechanical properties, in particular higher elongation, and with better MVTR values than prior art compositions. Accordingly, applicants submit that all claims are statutorily non-obvious under 35 USC §103(a).

3. Fee Authorization

The Commissioner is hereby authorized to charge any deficiency, or credit any overpayment, in the fee(s) filed, or asserted to be filed, or which should have been filed

GÖTZ
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herewith (or with any paper hereafter filed in this application by this firm) to our Account No. 14-1140.

Respectfully submitted,

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